

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

JULIO PEREZ, JR., #852734	§	
VS.	§	CIVIL ACTION NO. 6:06cv327
KENNETH THOMPSON, ET AL.	§	

ORDER OF DISMISSAL

Plaintiff Julio Perez, Jr., a prisoner confined in the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the Plaintiff's exhausted claims about two disciplinary cases should be dismissed as frivolous and the remaining claims should be dismissed for failure to exhaust administrative remedies. The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the Plaintiff are without merit. The Plaintiff admitted that he exhausted only two of his claims, thus the remaining claims should be dismissed for failure to exhaust pursuant to 42 U.S.C. § 1997e. The Plaintiff argued that his rights were violated with respect to the two exhausted claims, which concerned disciplinary cases. The claims about the disciplinary cases must be dismissed because the Plaintiff has not satisfied *Edwards v. Balisok*, 520 U.S. 641, 648 (1997). Moreover, they should be dismissed with prejudice

because the minimal punishment the Plaintiff received did not involve a protected liberty interest in order to trigger the protection of the Due Process Clause. *See Sandin v. Conner*, 515 U.S. 472 (1995); *Malchi v. Thaler*, 211 F.3d 953 (5th Cir. 2000). Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Plaintiff's claims concerning disciplinary case numbers 20050288490 and 20050315358 are **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1) and his remaining claims are **DISMISSED** with prejudice pursuant to 42 U.S.C. § 1997e. All motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 1st day of December, 2006.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE